

228 2, 1777.

Pen. on persons
voting who are
not qualified.
Vol. 2, 193.

XI. *And be it further enacted by the authority aforesaid,* That if any person shall hereafter vote at any election, who by law shall not be entitled to vote at such election, he shall forfeit and pay the sum of five pounds lawful money of this state; to be recovered with costs, by action of debt in any court of record having cognizance thereof, one half to the justices of the county wherein such election shall be had, to be applied towards lessening the county tax, and the other half to him or them who shall sue for the same; and where any suit shall be brought against any person for voting as aforesaid, without having a right to such vote, the *Onus Probandi* shall lie upon the defendant.

Pen. on candi-
dates giving re-
wards, &c.

XII. *And be it enacted by the authority aforesaid,* That if any person shall at any time before or after any election, either directly or indirectly, give any money, gift, gratuity, or reward, to any elector or electors, or to any county or town, in order to be elected, or to procure any other person to be elected as a member of the general assembly, every person so offending shall forfeit and pay five hundred pounds, lawful money of this state; to be recovered by action of debt, in any court of record having cognizance thereof, with costs, and shall be incapacitated to serve as a member during the continuance of that general assembly, for which such election shall be made as aforesaid.

Delegates, &c.
not to sit in As-
sembly.

XIII. *And be it further declared and enacted by the authority aforesaid,* That the delegates from this state in the congress of the United States, and officers of the courts of admiralty and courts of equity, shall be, and are hereby declared to be incapable of being elected as members to serve in the general assembly, or to enjoy seats therein; and any member of the general assembly who shall accept any such office, shall thereby vacate his seat therein.

XIV. *Repealed, Vol. 2, 177.*

No sheriff, cor-
oner to take the
poll
Vol. 2, 142.

XV. *And be it further enacted by the authority aforesaid,* That if at any time it shall happen that there shall be no sheriff in any county qualified according to law, the coroner or coroners in such county is, and are hereby empowered to hold the election for such county; and such sheriff or coroner, within ten days after every election, shall, at the request of any person elected to serve in the general assembly, or other person in his behalf, cause fair copies of the lists of votes, and the number of ticket ballots for each candidate, to be made out and delivered to the person requesting the same, or to his order, which lists and numbers shall be signed by the returning officer; and if any officer shall refuse so to do, or to make elections in any other manner than by this act is directed, or shall neglect or refuse to make returns of the elections by him to be made or taken, the officer so offending shall forfeit and pay five hundred pounds, lawful money of this state; to be recovered by action of debt, in any court of record having cognizance thereof, with costs, one half to the governor for the time being, for the use of the state, and the other half to such person as shall sue for the same.

XVI. *Repealed, Vol. 2, '8.*

CHAP. 5.

Provided for by subsequent acts.

An act for directing the method of appointing jurors in all causes, civil and criminal.

CHAP. 6.

1, 1777, 6.
1780, 13.

Persons owing
allegiance.

An act to amend an act for declaring what crimes and practices against the state shall be treason, and what shall be misprision of treason, and providing punishments adequate to crimes of both classes, and for preventing the dangers which may arise from persons disaffected to the state.

BE it enacted by the General Assembly of the State of North-Carolina and it is hereby enacted by the authority of the same, That all and every person and persons (prisoners of war excepted) now inhabiting or residing within the limits of the state of North-Carolina, or who shall voluntarily come into the same hereafter to inhabit or reside, do owe and shall pay allegiance to the state of North-Carolina.

When deemed
high-treason.

II. *And be it further enacted by the authority aforesaid,* That if any person or persons belonging to or residing within this state, and under the protection of its laws shall take a commission or commissions from the king of Great-Britain, or any under his authority, or other the enemies of this state, or the United States of America, or shall levy war against this state, or the government thereof, or knowingly and wilfully shall aid or assist any enemies at open war against this state, or the United States of America, by joining their armies, or by instigating, or procuring or persuading others to enlist for that purpose, or by furnishing such enemies with arms, ammunition, provision, or any other article for their aid or comfort, or shall form, or be in any wise concerned in forming, any combination, plot or conspiracy, for betraying this state, or the United States of America, into the hands or power of any foreign enemy, or shall give any intelligence to the enemies of this state for that purpose, every person so offending, and being thereof legally convicted by the evidence of two sufficient witnesses, or standing mute, or peremptorily challenging more than

Trial.

thirty five jurors, in any court of oyer and terminer, or other court that shall and may be established for the trial of such offences, shall be adjudged guilty of high treason, and shall suffer death without the benefit of clergy, and his or her estate shall be forfeited to the state. *Provided*, That the judge or judges of the court wherein such conviction may be, shall and may order and appropriate so much of the traitor's estate as to him or them may appear sufficient for the support of his or her family. 2,1777. 229

III. *And be it further enacted by the authority aforesaid*, That if any person or persons within this state shall attempt to convey intelligence to the enemies of this state, or of the United States, or shall publicly and deliberately speak or write against the public defence, or shall maliciously and advisedly endeavour to excite the people to resist the government of this state, or persuade them to return to a dependence on the crown of Great-Britain, or shall knowingly spread false and dispiriting news, or maliciously and advisedly terrify and discourage the people from enlisting into the service of this state, or the United States, or shall stir up or excite tumults, disorders, or insurrections in the state, or dispose the people to favour the enemy, or oppose, or endeavour to prevent the measures carrying on in support of the freedom and independence of the said United States, every such person or persons, being thereof legally convicted by the evidence of two or more creditable witnesses, or other sufficient testimony, shall be adjudged guilty of misprision of treason, and shall suffer imprisonment during the war, and forfeit to the state one half of his, her or their lands, tenements, goods and chattels. What misprision of treason.

IV. *And be it further enacted by the authority aforesaid*, That all offences by this act declared misprision of treason, shall be cognizable before any justice of the peace of the county where the offence was committed, or where the offender can be found; and every justice of the peace within this state, on complaint to him made on the oath or affirmation of one or more creditable person or persons, shall cause such offender to come before him, and enter into a recognizance, with one or more sufficient surety or sureties, to be and appear at the next superior court of the district wherein the offence was committed, and abide the judgment of the said court, and in the mean time to be of the peace and good behaviour to all people within the state; and for want of such surety or sureties, the said justice shall and may commit such offender either to the gaol of the county or district where the offence was committed, and appoint a guard for the safe conveying him to such gaol; and all persons charged on oath or affirmation with any crime or crimes by this act declared to be treason against the state, shall be dealt with, and proceeded against, in like manner as the law directs in respect of other capital crimes. Trial.

V. And whereas the safety of the state, and the present critical situation of affairs, make it necessary that all persons who owe or acknowledge allegiance or obedience to the King of Great-Britain should be removed out of the state: *Be it enacted by the authority aforesaid*, That all the late officers of the King of Great-Britain, and all persons (Quakers excepted) being subjects of this state, and now living therein, or who shall hereafter come to live therein, who have traded immediately to Great-Britain or Ireland within ten years last past, in their own right, or acted as factors, storekeepers, or agents, here or in any of the United States of America or Ireland, shall take the following oath of abjuration or allegiance, or depart out of the state, viz. Where cognizable.

"I WILL bear faithful and true allegiance to the state of North-Carolina; and will truly endeavour to support, maintain, and defend the independent government thereof, against George the third, king of Great-Britain, and his successors, and the attempts of any other person, prince, power, state or potentate, who by secret arts, treasons, conspiracies or by open force, shall attempt to subvert the same, and will in every respect conduct myself as a peaceful orderly subject; and that I will disclose and make known to the governor, some member of the council of state, or some justice of the superior courts or of the peace all treasons, conspiracies, and attempts, committed or intended against the state, which shall come to my knowledge. Persons to take the oath of allegiance.

And that all persons being Quakers, Moravians, Menonists, and Dunkards, and under the circumstances above mentioned, shall make the following affirmation, or depart the state:

"I A. B. do solemnly and sincerely declare and affirm, that I will bear true fidelity to the independent state of North-Carolina, and to the powers, and authorities which are or may be established for the good government thereof; and I do renounce any fidelity to the present king of Great-Britain, his heirs and successors; and that I will disclose and make known to the governor, some member of the council of state, judge of the superior court, or justice of the peace, all treasons, conspiracies, or attempts, committed or intended against the same, which shall come to my knowledge." Quakers affirmation.

2302,1777. And the said oath or affirmation shall be taken and subscribed in open court, in the county where the person or persons taking the same shall or do usually reside.

Justices may
issue citations.

VI. *And be it further enacted by the authority aforesaid,* That the county courts in each and every county, and every justice of the peace in each respective county, shall have full power to issue citations against persons coming within the above description, as officers, merchants, traders, factors, storekeepers, or agents, and to demand surety on recognizance if necessary, and to require their attendance at the next ensuing court to be held for the county : and if any person so cited (due proof being made thereof) shall fail or neglect to attend, or attending shall refuse to take the said oath or affirmation, (as the case may be) then the said court shall and may have full power and authority to order such person to depart out of this state to Europe or the West-Indies, within sixty days, and may take bond and security, in the name of the governor, for the benefit of the state, for faithful compliance with such order ; and if any person so ordered shall fail or neglect to depart within the limited time, such bond shall be forfeited to the state, without good and sufficient reasons shewn to, and approved of by the governor and council ; and the justices, or any of them, in the county wherein the person so failing or neglecting to depart shall be found, shall and may cause him to be apprehended and brought before the court of the county where the order was made ; and the said court shall in such case send the person so offending as speedily as may be out of the state, either to Europe or the West-Indies, at the cost and charges of such offender, and to this end shall and may direct the clerk of the court to issue an order or orders to any sheriff in the state to seize and sell so much of the goods and chattels, lands and tenements, of such person within his bailiwick, as may be judged necessary by said court to defray such costs and charges, together with the costs and charges of apprehending and confining such person until he shall be sent out of the state; and the sheriff to whom such order of court shall be directed, is hereby required to obey the same, and to execute proper conveyances; and to return the money arising by any sale made by virtue of such order, after deducting his fees and commissions as in other cases, to the next county court of the county from whence such order issued, under the penalty of five hundred pounds, current money ; to be recovered by action of debt, in any court having cognizance thereof, one half for the use of the state, the other half to the person that shall sue for the same ; and if any surplus shall remain after paying all costs and charges for apprehending, confining, and sending such person out of the state, then the county court shall cause such surplus to be paid the owner. *Provided nevertheless,* That all and every such person and persons shall have liberty to sell and dispose of his or their estates, and after satisfying all just demands, to export the amount in produce (provisions and naval-stores excepted) and may also nominate and appoint an attorney or attorneys to sell and dispose of his or their estates, for his or their use and benefit ; but in case any real estate belonging to any such person shall remain unsold for more than three months next after the owner thereof hath departed this state, the same shall be forfeited to and for the use of the public.

Pen. on persons
returning.

VII. *And be it further enacted,* That if any person so departing, or sent off from this state, shall return to the same, then such persons shall be adjudged guilty of treason against the state, and shall and may be proceeded against in like manner as is herein directed in cases of treason.

VIII. And whereas among other things it was enacted in an act, entitled " An act for declaring what crimes and practices against the state shall be treason, and what shall be misprision of treason, and providing punishments adequate to crimes of both classes, and for preventing the dangers which may arise from persons disaffected to the state," that each and every justice in each respective county may cite any person or persons to appear before the county court where such person or persons usually reside, and take the aforesaid oath or affirmation ; and in case of non-attendance or refusal, the said court shall and may have full power to compel such person or persons to leave the state, under the same regulations herein mentioned in other cases. And as some scruples have arisen with respect to the manner by law required for the service of such citations, and as by many it has been held that a service upon the person of him intended to be cited was necessary, before his attendance in court could be legally compelled, as many suspected persons by continual absence from their place of abode, or frequently removing from thence, have rendered the service of such personal citations difficult, and in some cases impracticable, whereby they evade the intentions of the said act, and cannot be obliged to take the said oath prescribed, nor be made subject to the penalties ordained for neglecting or refusing the same : and whereas there is great reason to believe that there are divers persons whose intentions are inimical to the state, who would in case of invasion by our enemies, or the expectation of immediate support of them, carry such intentions into practice, but who artfully in their open demeanor and deportment betray no such design, whereby from not incurring particular suspi-

on, they have escaped being cited; and as it becomes the duty of every member of society to give proper assurance of fidelity to the government from which he enjoys protection, and by their refusal so to do, the voice of reason and justice, confirmed by the practice of all nations, proclaim that they should no longer enjoy the privileges of freemen of the said state; and as the penalties ordained by the said act have been in a great measure evaded by the difficulty or impossibility of procuring vessels to transport all such recusants beyond sea, or from their being unable to pay the expence of the voyage, by which means such persons still remain within this state, without suffering the penalties they have justly deserved; *Be it further enacted by the authority aforesaid,* That the county court of each respective county which shall sit after the last day of February, shall divide the county into several districts, in each of which shall reside one or more justices of the peace, which said justices within their respective districts are hereby enjoined and required to administer such oath of allegiance or affirmation, as the case may be, to all free male persons above sixteen years of age (persons *non compos mentis*, prisoners of war, only excepted) and such justice or justices in their respective districts so allotted to him or them, shall immediately after the sitting of the said court, in different parts of the said county, one of which shall be the court-house of the same, and also upon the church, if any there be, post and publish a notice in writing of the places and times when and where he or they will attend within their respective districts to administer such oath or affirmation; and all such persons who are inhabitants of the said districts respectively (and it is declared that a residence of one week shall in this instance constitute any person an inhabitant, seafaring persons and foreign traders excepted) being above the age of sixteen years, and of sound mind, shall at such time attend upon such justice of the peace, and take the oath or affirmation required, as the case may be, and subscribe the same in a book which such justice or justices shall keep for that purpose, or in case of such juror or affirmant not being able to write, the justice shall write such juror or affirmant's name, which book or list shall at the next succeeding court be returned to the said court, together with the names of those within his or their respective district refusing or neglecting the same; and if any person (such only as are by this act excepted) shall fail to attend, or attending at such time and place as he shall have been warned by such public notice, shall refuse to take the oath, or make such affirmation, as the case may be, except excused by sickness or unavoidable necessity, or other sufficient reason, to be adjudged of by the next county court, the party offering such excuse proffering at the same time to take such oath or affirmation, as the case may be, which in this case such county court are directed to administer, such person or persons so offering, shall be ordered by the said county court next after such failure or neglect, to take the said oath, or quit the state, and depart to the West-Indies or Europe in sixty days; and if he or they shall fail so to do, and shall at the expiration of such term be found within this state, then the county court shall and may, at their discretion, either exercise the same power and authority with respect to such person or persons, in order to compel his or their departure out of this state, as is herein before provided, with regard to the late officers of the King of Great-Britain, and persons who have traded to Great-Britain or Ireland within ten years last past, or been concerned for, or employed by persons trading thereto, within the time aforesaid, or permit him to remain within the state.

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County divided into districts, and oath to be administered.

Proceedings against persons liable to take the oath, who neglect or refuse.

IX. *And be it further enacted by the authority aforesaid,* That all persons failing or refusing to take the oath of allegiance, and permitted by the county courts, as immediately aforesaid, to remain in the state, shall be adjudged incapable and disabled in law to have, occupy or enjoy, any office, appointment, licence, or election of trust or profit, civil or military, within this state, and shall not be capable of being elected to, or aiding by their votes to elect another to be a member of assembly, and shall not by themselves, or by deputy, attorney or trustee, execute any such office, trust or appointment, and shall be disabled to prosecute any suit at law or equity, or to be guardians, executors or administrators, or capable of any legacy, or deed of gift of lands, and shall be disabled from taking any lands by descent or purchase, or conveying lands to others for any term longer than for one year, and shall not keep guns or other arms within his or their house, but the same may be seized by a written order of a justice of the county in which he or they reside; and after the expiration of the said sixty days, he or they shall not be permitted to depart this state without permission first had and obtained from the governor and council; and in case of being suffered to depart, shall give bond and sufficient security, if such shall be required, not to be aiding to the enemies of this state during his or their absence; and in case of their departure without such permission had, he or they shall forfeit all their goods and chattels, lands and tenements, to the use of the state. *Provided nevertheless,* That all and every person who has already taken the oath, or made the affirmation prescribed, before any authority competent by law to receive the same, upon his producing a certificate of the same to

Disabilities of persons suffered to remain.

Proviso.